IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER

TWO THOUSAND AND FOUR

PRESENT:

THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

REV.W.P.M.P.NOs.27583 AND 10159 of 2004

IN

W.P.NO. 17373 OF 2003

AND

W.P.NO. 17373 of 2003

REV.WP.MP.NO.27583 of 2004

BETWEEN:

The Union of India, rep., by its Secretary to Government,

Ministry of Home Affairs, New Delhi.

…PETITIONER/

1ST RESPONDENT IN W.P.No.17373 of 2003

AND

1. K.Lakshman Mohan s/o late K.Sugunakar Rao,

Krishna District, R/O Machilipatnam.

2. The State of Andhra Pradesh, rep., by its Chief Secretary to Government, General Administration Department, Secretariat Buildings, Hyderabad.

3. The State of Andhra Pradesh, rep., by its Principal Secretary to Government, Home Department, Secretariat, Hyderabad.

… RESPONDENT/

PETITIONER AND RESPONDENT NOS.2 & 3 IN DO

Counsel for the Petitioner:- A.Sanjeeva Kumar

Counsel for the Respondent No.1 : Mr.NOOTY RAMA MOHAN RAO

Counsel for the Respondent Nos.2 and 3:THE ADDITIONAL ADVOCATE GENERAL

Petition under Section114 of C.P.C., praying that in the Circumstances stated in the Memo of petition the High Court may be pleased to review the order dt. 18-3-2004 in W.P.No.17373 of 2003 on the file of this Court.

AND

Rev. W.P.M.P NO : 10159 of 2004

BETWEEN:-

1. State of Andhra Pradesh, rep., by its Chief Secretary to Government, General Administration Department, Secretariat, Hyderabad.

2. State of Andhra Pradesh, rep., by its Principal Secretary to Government, Home Department, Secretariat, Hyderabad.

…….REVIEW PETITIONERS/
(RESPONDENTS 2 AND 3 IN W.P.NO. 17373 OF 2003)

AND

1. K.Lakshmi Mohan s/O late K.Sugunakar Rao,

R/O Machilipatnam, Krishna District.

2. Union of India, rep., by its Secretary to Government,

Ministry of Home Affairs, New Delhi.

….. RESPONDENT/
PETITIONER AND 1ST RESPONDENT IN DO.

Counsel for the Petitioner: ADDITIONAL ADVOCATE GENERAL OF A.P.

Counsel for the Respondent NO.1: Sri. NOOTY RAMA MOHAN RAO

Counsel for the Respondent No.2 :A.SANJEEVA KUMAR

S.C. FOR CENTRAL GOVERNMENT.

Petition under Section 114 of CPC read with Order 47 Rule 1 of CPC praying that in the Circumstances stated in the memo of petition the High Court may be pleased to review the judgment dt 18-3-2004 in W.P.NO.17373 of2003 on the file of this Court.

W.P.NO. 17373 of 2003

BETWEEN: -

-

K. Lakshman Mohan S/o late K. Sugunakar Rao, occu: Superintendent of Police, Krishna District, r/o Machilipatnam

……PETITIONER

AND

1. Union of India, rep. by its Secretary to Government,

Ministry of Home Affairs, New Delhi.

2. State of Andhra Pradesh, rep. by its Chief Secretary to

Government, General Administration Department, Secretariat,

Hyderabad.

3. State of Andhra Pradesh, rep. by its Principal Secretary to

Govt., Home Department, Secretariat, Hyderabad.

…..**RESPONDENTS**

Petition under Article 226 of Constitution of India praying that in the circumstances stated in the Affidavit filed herein, the High Court may be pleased to issue a writ, Order or direction more particularly one in the nature of writ of Certiorari by:

a. Calling for the record relating to and connected with O.A.NO. 988 of 2002, dated: 6/5/2003 on the file of Central Administrative Tribunal, Hyderabad and set aside the same;

b. Also declare the action of the respondents in not treating the petitioner as to have been promoted on and from 31.12.1996 as bad in law and unjust;

c. Consequently, declare that the petitioner is entitled to be treated to have been holding the post on I.P.S. on and from 31.12.1996.

d. Direct the respondents to review the Order of allotment of the petitioner as 1990 in pursuance of such a declaration, grant all consequential benefits that would flow from out of such a revision of year of allotment like fitness arrears and promotions to higher grade etc.

For the Appellant: Mr. NOOTY RAMA MOHANA RAO

For the Respondent No.1: Mr. A. SANJEEVA KUMAR

S.C. FOR CENTRAL GOVERNMENT.

For the Respondents No.2 & 3: THE ADDITIONAL ADVOCATE GENERAL.

The Court made the following Order:-

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COMMON ORDER:

(per G. Bikshapathy J)

1. The Review Petitions are filed by the Union of India and State Government seeking to review the judgment passed by this Court in W.P.No. 17373 of 2003, dated: 18.3.2004.

2. Respondent herein filed O.A.NO. 988 of 2002 on the file of the Central Administrative Tribunal, Hyderabad seeking declaration that he shall be deemed to have been promoted and has been holding the post in the I.P.S. Cadre from 31.12.1996 and consequently sought directions to the respondents to review the year of allotment of the petitioner to I.P.S. as 1990 and for consequential benefits flowing out of the revised year of allotment.

3. The learned tribunal, however, on considering the matter held that the petitioner was not entitled for the relief as claimed for and accordingly dismissed the O.A. by an Order dated: 5.5.2003.

4. Aggrieved by the said Order of the Central Administrative Tribunal, he filed W.P.No. 17373 of 2003. The Writ Petition was allowed by this Court by judgment dated: 18.3.2004. However, the respondents filed the Review applications stating that the matter was considered under the amended provisions of I.P.S. (Regulations of Seniority) Rules, 1988 was considered under the amended provisions, but in fact the case ought to have been considered under the unamended rules. Therefore, if the matter is considered under the unamended Rules, the respondent is not entitled for relief as granted by this Court. However, it is to be noted that none of the parties brought to the notice of this Court about this position and made the submissions basing on the amend provisions only. In view of the present situation, the matter has to be considered only under the unamended Rules. Thus, we find, it is a fit case for reviewing the Order. Accordingly, we allow the Review Petition and set aside the

judgment of this Court in W.P.No. 17373 of 2003, dated: 18.3.2004.

5. The matter is heard again on merits. The brief facts as set out by the petitioner are traced out as follows:

The petitioner was selected by the A.P. Public Service Commission by direct recruitment to the post of Deputy Superintendent of Police. He was appointed to the said post in the year 1978 after completion of training he was posted as S.D.P.O. Nalgonda with effect from 11.10.1980. Petitioner has been discharging his duties with utmost dedication and he received appreciations from his superiors. He also earned number of commendations. He was posted to sensitive areas, and he was awarded A.P. Police Uttam Seva Pathakam in 1992. He was also awarded Indian Police Medal for meritorious Services in January, 1997. He became eligible for promotion to I.P.S. cadre under the provisions of the All India Services Act. The Central Government framed I.P.S. (Recruitment) Rules, 1954. The recruitment to I.P.S. takes place from various sources. Rule 4 stipulates method of recruitment to the service, which reads thus:

> **"4. Method of recruitment to the Service:- (1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely:-**

a. **by a competitive examination;**

> **(aa) by selection of persons from among the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union, "who were commissioned on or after the 1st November, 1962 but before the 10th January, 1968, or who had joined any pre-Commission training before the latter date, but who are commissioned on or after that date" and who are released in the manner specified in sub-rule (1) of rule 7-A.**

b. **by promotion of substantive members of a State Police Service.**

> **(2) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the Service, or such**

vacancies therein as maybe required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method shall be determined on each occasion by the Court in consultation with the Commission and the State Government concerned.

(3) Notwithstanding anything hereinafter contained in this rule, in relation to the State of Jammu and Kashmir, recruitment to the State Cadre on its initial constitution shall be made by such method, as the Central Government may, after consultation with the State Government and the Commission prescribe.

(4) Notwithstanding anything hereinafter contained in this rule, in relation to the Union Territories and the North East Frontier Agency recruitment to the Joint Cadre on its initial Constitution shall be made by such method, as the Central Government may, after consultation with the Commission, prescribe."

Rule 6 regulates appointment to the service, which is extracted below:

"6. Appointment to the Service:- (1) All appointments to the Service after the commencement of these rules shall be made by the Central Government and no such appointment shall be made except after recruitment by one of the methods specified in rule 4.

(2) The initial appointments of persons recruited to the Service under clause (a) and (appellate authority) of sub-rule (1) of rule 4 shall be in the junior time-scale of pay.

(3) The initial appointments of persons recruited to the Service under clause (b) of sub-rule (1) of rule 4 in accordance with the provisions of the Indian Penal Code (Appointment by Promotion) Regulations, 1955 shall be in the senior time-scale of pay."

But, in this case we are only concerned with the promotion from the substantive members of State Police Service and such appointments are governed by the I.P.S. (Appointment and Promotion) Regulations, 1955 (for brevity Promotion Regulations). Under Regulation 3, a committee is constituted to make selection for the purpose of recruiting suitable Officers to the Service and detailed procedure

relating to preparation of the list of suitable Officers is stipulated in Regulation 5. It may be stated that the Officers of the Rank of Deputy Superintendent of Police in the State Service and who have put 8 years of service are eligible to be considered for consideration of such promotion. The seniority list at the State Level Officers will be determinative factor. However, the turn of the petitioner fructified for 1995-96. For the purpose of preparation of the seniority list, the Select Committee met on 14.3.1995 for making recommendations for promotion to I.P.S. Cadre. Petitioner was one among 18 candidates. However, he was not recommended by the selection committee. Aggrieved by the said action, he filed O.A.NO. 498 of 1995 before the Central Administrative Tribunal. The learned tribunal dismissed the same by an Order dated: 7.11.1997. While O.A. was pending, the petitioner was considered for I.P.S. again during 1996. The Select Committee, which met for the purpose of recommending the candidates in 1996, the petitioner appears to have been placed at Sl.No. 3, out of four names recommended. At that relevant time, there were only two clear vacancies. Therefore, Sl.No. 1 and 2 were immediately promoted. The 3rd vacancy would arise on the retirement of one K.L. Reddy. It was to take place on 31.12.1996. It is the case of the petitioner that the said K.L. Reddy was relieved on 31.12.1996/A.N. and the petitioner was asked to take over the charge from K.L. Reddy immediately and he took over the charge from K.L. Reddy by 1.30 p.m.

6. It is the case of the petitioner that he was issued with appointment Order with effect from 1.1.1997 to I.P.S. and that he was erroneously allotted the year of allotment of 1991 instead of 1990. Under the I.P.S. Recruitment Rules, year of allotment is governed by Rule (3). Under the said rule, a person would be given weightage to the Police Service and the year of allotment would be fixed based on the Service rendered by him in the feeder category subject to certain limits. It is the principle contention of the petitioner that since he has taken over the charge from K.L. Reddy from the Afternoon of 31.12.1996, he is deemed to have been appointed from 31.12.1996 and not from 1.1.1997 and if the appointment is reckoned from

31.12.1996 Afternoon, the year of allotment would be 1990 and not 1991.

7. Two questions would arise in this case. Firstly, what is the date of appointment of the petitioner whether it is 31.12.1996 Afternoon or 1.1.1997 and secondly, the fixation of year of allotment whether it is 1990 or 1991. This Court in the Order dated: 18.3.2004 in the Writ Petition, while dealing with the issue No.1 held that his appointment to I.P.S. has to be reckoned from 1.1.1997 even though he has taken charge from K.L. Reddy on the Afternoon of 31.12.1996. We reiterate the same view in this Order also.

8. The next question that calls for consideration is fixation of year of allotment. However, as already observed by us, that the matter was considered under the amended rule 3 of I.P.S. (Regulation of Seniority) Rules, 1988 (for brevity "Seniority Rules), but the requirement is that the issue has to be considered under pre-amended rule 3.Therefore, let us consider the matter with reference to the pre-amended rule.

9. It is the contention of the official respondents that the year of allotment has to be calculated on the basis of the unamended rule as existed prior to 1.1.1998 as the petitioner was appointed prior to amendment of rule 3(ii) on 1.1.197. Therefore, the weightage of the petitioner should be calculated on the basis of the said old rule. The said Rule provides that the year of allotment of the promotee Officer should be reckoned from the date of the Officer was appointed to the Service. The facts are not much in dispute. As can be seen from the Service record of the petitioner, he was appointed as Deputy Superintendent of Police on 27.12.1978. However, he was appointed by promotion to I.P.S. with effect from 1.1.1997 even though, he took charge from his predecessor K.L. Reddy on the Afternoon of 31.12.1996. Therefore, we are required to consider the case of the petitioner under Rule 3 as existed prior to 1.1.1998. Rule 3 contains assignment of year of allotment, which reads thus:

"3. Assignment of year of allotment- (1) Every Officer shall be

assigned a year of allotment in accordance with the provisions hereinafter contained these rules.

(2) The year of allotment of an Officer in Service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the rules, orders and instructions in force immediately before the commencement of these rules.

(3) The year of allotment of an Officer appointed to the service after the commencement of these rules shall be as follows:-

(i) the year of allotment of a direct recruit Officer shall be the year following the year in which the competitive examination was held;

Provided that, in the case of exempted probationers, as defined in clause (ee) of rule 2 of the I.P.S. (Probation) Rules, 1954, and direct recruit officers, who are permitted to joint probationary training under sub-rule (1) of rule 5 of the I.P.S. (Probation) Rules, 1954, with the direct recruit Officers of a subsequent year of allotment, they shall be assigned that subsequent year as the year of allotment.

(ii)The year of allotment of a promotee Officer shall be determined in the following manner:-

a. **For the service rendered by him in the State Police Service upto twelve years, in the rank not below that of a Deputy Superintendent of Police or equivalent, he shall be given a weightage of four years towards fixation of the year of allotment.**

b. **He shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause (a), subject to a maximum weightage of five years. In this calculation, fractions are to be ignored;**

c. **The weightage mentioned in sub-clause (b) shall be calculated with effect from the year in which the Officer is appointed to the Service.**

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an Officer senior to him in that select list or appointed to the service on the basis of an earlier Select list."

However, the said Rule was amended and the amended Rules as far as the Promotee Officer reads thus:

> **"3. Assignment of year of allotment: (1) to (3) (i)**
>
> **xxx**
>
> **(ii) The year of allotment of a promotee Officer shall be determined with reference to year in which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent, up to the 31st day of December of the year immediately before the year in which the meeting of the Committee to make selection was held to prepare the Select List on the basis of which he was appointed to the Service, in the following manner:-**

a. **for the service rendered by him up to twenty one years, he shall be given weightage of one year for every completed three years of service, subject to a minimum of four years;**
b. **He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty years, referred to in sub-clause (a), subject to a maximum of three years.**

> **Explanation.- For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored.**
>
> **Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an Officer senior to him in that Select List or appointed to the service on the basis of an earlier Select List."**

The said amendment entered force from 1.1.1998. Therefore, let us consider the case of the petitioner under unamended rule 3. In case of promotee Officers, the year of allotment has to be determined after giving weightage as follows:

> **"For the service rendered by him upto 12 years, he is entitled for weightage of four years. Thereafter, he shall be given weightage of one year for every completed three years of service beyond the date of 12 years. However, the weightages mentioned in clause (b) shall be calculated with effect from the year in which the Officer was appointed to the Service.**

The expression "Service" was defined to mean Indian Police Service, the

expression “promotee Officer” was defined as an Officer appointed to the service in accordance with the provisions of the I.P.S. Appointment by Promotion Regulation, 1955 and the expression “Select List” was defined as List was prepared in accordance with the Indian Police Service Recruitment Service Regulation, 1955.

10. Under Rule 5 of Promotion Rules, the modalities for preparation of list of suitable Officers is contained. The Select Committee constitutes under Rule 3 shall meet every year and prepare list of the members of the State Police Service found suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not exceed twice the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of list. The list so prepared will be reviewed and revised every year.

11. Under Rule 7, the Union Public Service Commission shall consider the list prepared by the Select Committee and prepare final list and the said list shall form a select list of the members of the State Police Service. The said Select List shall remain in force till it is reviewed or revised. However, this rule was further clarified by substitution of sub-rule (4) to Rule 7 with effect from 1.1.1998, which reads thus:

> **“7. Select list:-**
>
> **(1) to 3): xxx xxx xxxx**
>
> **(4) The Select List shall remain in force till 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5 or up to sixty days from the date of approval of the Select List by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later.”**

12. Rule 9 relates to appointment to the service from the select list. Under the said Rules, the appointment of the members from the State Police Service shall be made by the Central Government in the order in which the members of the State Police

Service appeared in the select list for the time being in force. Therefore, it is not in dispute that the petitioner was figuring as Sl.No. 3 in the select list for the year 1996 and a fresh select list shall be prepared for 1997 and thereafter every year. The expression “year” was defined in the amended rules as a “period of commencement from 1st January and ending 31st day of December of the same year”. Therefore, when the name of the petitioner figuring in select list of 1996, it shall remain valid upto 31st December of the year in which the meeting of the Select Committee was held. However, under Rule 9, the appointment takes place from out of the select list for the time being in force during the period when the select list is in force. Admittedly, in the instant case, the petitioner was selected in the select list for the year 1996 and he was appointed from out of the select list and he took charge from K.L. Reddy on the Afternoon of 31.12.1996 and such an arrangement is permissible under the Promotion Rules.

13. Therefore, the crucial question that calls for consideration is the date of appointment to the service from the select list? Though he was appointed to I.P.S. by notification issued by the Central Government with effect from 1.1.1997, but the fact remains that he was appointed from out of the select list of 1996 and the list prepared for 1996 is valid for one year. The validity of the select list shall stand extinguished at the end of the year and fresh select list for 1997 was prepared and the select list for 1996 becomes inoperative. Therefore, rule 7 and 9 have to be interpreted harmoniously. Hence the expression as appearing in clause 3© namely “the weightage mentioned in sub-clause (b) shall be calculated with effect from the year in which the Officer was appointed” has to be given meaningful interpretation. Even though he was appointed on 1.1.1997, it has to be only construed as having been appointed on the last day of the year in which the meeting of the select committee was held for the purpose of Rule 3(3)(ii)(2) and thus the expression “the year in which the petitioner was appointed to the service” has to be only reckoned with reference to the year in which the select committee held its meeting. Further, in this case we find peculiar and unanticipated features. One Cadre Officer by name

K.L. Reddy retired with effect from 31.12.1996 and as per the undisputed situation the petitioner took charge from him on 31.12.1996/A.N. and according to the petitioner he took charge at 1-30 p.m. itself and it is also borne out by the documents. Therefore, the vacancy was deemed to have occurred on 31.12.1996/A.N. The select list was prepared and approved by the Union Public Service Commission for 1996, which also include the post held by K.L. Reddy and in fact the petitioner was earmarked to fill up the vacancy of K.L. Reddy. If the vacancy had been treated for 1997,the appointment would be made from 1997 select list. Added to this, the petitioner started officiating to I.P.S. Cadre post from 31.12.1996/A.N. followed by regular appointment from 1.1.1997. This type of coincidences are exceptionally rare. Therefore, viewed from dual angles, the year in which Officer was appointed to the service is to be taken as 1996, having been selected in 1996 select list, he shall be deemed to have been appointed on 31.12.1996 for the purpose of calculation of weightages. He had completed 18 years by 17.12.1996 by which he earned six weightages and if these six weightages taken into consideration, the year of allotment will be 1990. That is the reason why he was allowed to take charge from K.L. Reddy on 31.12.1996 in the Afternoon and nothing could have prevented the authorities from giving additional charge to another Cadre Officer. It is, however, contended that the petitioner was appointed from1.1.1997 onwards and therefore, the year of allotment should be reckoned only as 1997 and not 1996. But, that contention would go contrary to the rule 7 and 9 of the Promotion Rules and also the conduct of the State in directing the petitioner to take charge from K.L. Reddy with effect from 31.12.1996/A.N.

14. Under those circumstances, we are of the considered view that the Order of the tribunal is not sustainable and the same is set aside and the petitioner is entitled for year allotment to I.P.S. 1990 and he is entitled for consequential benefits out of the fixation of year of allotment as 1990.

15. Accordingly, the Writ Petition is allowed.

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G.BIKSHAPATHY, J

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S.ANANDA REDDY, J

27-12-2004

CHV

L.R. COPY: No.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Devinder Gupta the Chief Justice on this Monday the Twenty Seventh Day of December, Two Thousand and Four.

ASST. REGISTRAR

//**TRUE COPY**//

SECTION OFFICER

THE HON'BLE MR. JUSTICE G. BIKSHAPATHY

(FOR HIS LORDSHIP'S KIND PERUSAL)

To

1. Registrar, Central Administrative Tribunal Hyderabad Bench at Hyderabad.

2. Secretary to Government, Ministry of Home Affairs, Union of India, New Delhi.

3. The Chief Secretary to Government, General Administration Department, State of A.P. Secretariat, Hyderabad.

4. The Principal Secretary to Government, Home Department, State of A.P. Secretariat, Hyderabad.

5. 2 CCs. To the Additional Advocate General, High Court of A.P. Hyderabad (OUT)

6. 2 CD Copies.

7. Two CC's to Mr. Nooty Rama Mohana Rao, Advocate (OPUC)